

**SALES AND USE TAX REVIEW COMMISSION  
RECOMMENDATION PURSUANT TO P.L. 1999, C. 416**

**BILL NUMBER:**

A-3597

**DATE OF INTRODUCTION:**

May 15, 2003

**SPONSORS:**

Assemblywoman Heck

**DATE OF RECOMMENDATION:**

August 5, 2003

**IDENTICAL BILL:**

**COMMITTEE:** Assembly Commerce and Economic Development

**DESCRIPTION:**

This bill amends the Urban Enterprise Zones Act to provide that sales of household appliances costing over \$1200 made to a qualified business for the exclusive use or consumption of such business within an Urban Enterprise Zone are no longer entitled to an exemption from sales tax. The bill further amends the Urban Enterprise Zones Act to require vendors in Urban Enterprise Zones and Urban Enterprise Zone-Impacted Business Districts to charge the full rate of sales tax on retail sales of household appliances costing over \$1200. It also amends the Sales and Use Tax Act to require vendors located in Salem County to charge the full rate of sales tax on retail sales of household appliances costing over \$1200.

**ANALYSIS:**

This bill makes two proposed changes to the Urban Enterprise Zones Act. N.J.S.A. 52:27H-60, et. seq. First, the bill amends the Urban Enterprise Zones Act to provide that sales of household appliances costing over \$1200 are no longer entitled to an exemption from sales tax when made to a qualified business for the exclusive use or consumption of such business within an Urban Enterprise Zone.

The original intent of the Legislature in enacting the sales tax exemption for enterprise zone vendors was to create an incentive for businesses to locate to depressed areas within the State. To this end, the Legislature enacted an exemption for the purchase of most items of tangible personal property by a qualified business for the exclusive use or consumption on the premises of the qualified business at its zone location. Only personal property controlled by the qualified business qualifies for the exemption. Items such as office and business equipment and supplies, furnishings, trade fixtures, and repair or construction materials are examples of items that were initially viewed to fall within the exemption. This bill changes the law to provide that household appliances costing over \$1200 are no longer entitled to the exemption.

Second, the bill amends the Urban Enterprise Zones Act to require vendors in Urban Enterprise Zones and Urban Enterprise Zone-Impacted Business Districts to charge the full rate of sales tax on retail sales of household appliances costing over \$1200. It also amends the Sales and Use Tax Act to require vendors located in Salem

County to charge the full rate of sales tax on retail sales of household appliances costing over \$1200.

The Statement to the bill clarifies that it is the sponsor's belief that the original Urban Enterprise Zone Program legislation excluded automobile sales from the partial sales tax exemption in order not to create an unfair advantage to retailers on items of sufficient expense to justify travel into the zone for cost-savings. The Statement to the bill expresses the sponsor's belief that unlike the exclusion for motor vehicles, the original Urban Enterprise Zone legislation did not take into account the purchase of expensive household appliances in providing the partial retail sales tax exemption and that it was never the intent of the Legislature to create a disadvantage for household appliance retailers situated outside, but proximate to, Urban Enterprise Zones. The bill was submitted to rectify this situation.

As testified to the Commission, if this bill were to take effect, competitors located outside of the zones and districts will no longer complain of and perceive unfair tax advantages for vendors located within the zones and districts on sales of household appliances costing over \$1200. The regulations to the Urban Enterprise Zones Act states that, "All sales made by a qualified and certified vendor must be made from his place of business within an enterprise zone, that is, either the purchaser must accept delivery at the vendor's place of business within an enterprise zone, or the vendor must deliver the tangible personal property from its place of business within an enterprise zone." N.J.A.C. 18:24-31.4(e). Thus, only receipts from sales which originate and are completed by the purchaser in person at the vendor's place of business within an enterprise zone qualify for the reduced rate of sales tax; provided, however, that after a sale has been completed within an enterprise zone, the vendor may deliver the tangible personal property to the purchaser at a location outside an enterprise zone.

However, in order to make more sales, qualified vendors with store locations inside and outside of a zone may take orders at the store location outside of the zone, but process the sales through its zone location in order to charge the customer a reduced rate of tax. Even though the vendor is not violating the Urban Enterprise Zones Act because the customer comes to the zone location in order to accept delivery or the customer comes into the zone to execute the written contract or sales agreement, this puts vendors without an enterprise zone location at a significant disadvantage. This could also occur at trade shows where competitors located outside of zones and districts do not have this benefit of delaying a sale in order to have the customer come to the zone in order to execute a sales agreement. The adoption of the bill will also discourage potential fraud by vendors who may falsify invoices to show that the sale was made within the zone or district but was actually made in an area where the property is subject to a full rate of tax.

In addition, this bill creates a significant advantage for the State's General Fund since the sales tax revenue of property that is subject to the full rate of tax paid to a qualified vendor in a zone or district is remitted to the State and not to the municipality. The gain of revenue to the State is enhanced by the fact that household appliances costing over \$1200 are expensive items and a large block of sales tax revenue for the State. As a result of the changes in the law that this bill creates, the State's budgetary crisis will be alleviated since the amount of monies that the State deposits in its General Fund will be increased.

The adoption of this proposal also solves a potential federal constitutional problem. New Jersey imposes use tax on items that are purchased out-of-State for use in New Jersey but sales tax was not collected or was collected at a rate less than the New Jersey sales tax rate. Constitutionally, the use tax in an area must be imposed at the same rate as the sales tax is imposed within the same area. A constitutional issue may result from household appliances purchased out-of-State for use in the urban enterprise zone. For instance, the State would require sales tax to be paid at the rate of 6%, while the same appliance purchased at the urban enterprise zone or district would only be subject to 3% sales tax. Therefore, if certain businesses in a zone may charge 3% sales tax, a payer of use tax within the zone may assert that the use tax must be imposed at 3%, instead of 6%. By taking household appliances (costing over \$1200) out of the purview of the Urban Enterprise Zones Act, the constitutional issue is mitigated.

The proposal of this bill is in response to the many assertions of abuses and unfairness that have been reported to the Division of Taxation, legislative representatives, and to the Commerce and Economic Development Commission. This bill represents a step in the right direction in reforming a Program which has experienced questionable success.

**RECOMMENDATION:**

The Commission recommends enactment of this bill.

**COMMISSION MEMBERS FOR PROPOSAL: 5****COMMISSION MEMBERS AGAINST PROPOSAL: 0****COMMISSION MEMBERS ABSTAINING: 0**

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